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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 305

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, PETITIONER

v.

BENNETT F. SCHAUFFLER, INDIVIDUALLY AND AS REGIONAL DIRECTOR FOR THE 5TH REGION, NATIONAL LABOR RELATIONS BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the District Court for the Eastern District of Virginia (R. 88) is unreported. The opinion, *per curiam,* of the Circuit Court of Appeals for the Fourth Circuit (R. 104) is reported in 91 F. (2d) 730.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on August 2, 1937 (R. 105). The petition

for certiorari was filed herein August 11, 1937, and was granted October 11, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, in view of the exclusive procedure and remedies provided in the National Labor Relations Act, the District Court properly granted respondents' motion to dismiss petitioner's bill in equity for an injunction against the conduct of a hearing and other proceedings which have been or might be taken by the National Labor Relations Board pursuant to that Act.

STATUTE AND REGULATIONS INVOLVED

The text of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*), and the applicable rules and regulations made and published by the Board pursuant thereto appear in the record (pamphlet R. 27–59).

The provisions of the Act are summarized in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 22–24, and in the brief for petitioners in Nos. 181 and 182,[1] pages 3–5.

[1] Nos. 181 and 182 are entitled, respectively, *A. Howard Myers et al.* v. *Bethlehem Shipbuilding Corporation, Ltd.*, and *A. Howard Myers et al.* v. *Charles Mackenzie et al.*

STATEMENT

The respondents Bennett F. Schauffler and Jacob Blum are respectively acting Regional Director and Regional Attorney of the National Labor Relations Board for the Fifth Region, which includes the State of Virginia. A trial examiner to be designated by the Board to hold the hearing sought to be enjoined, but whose name was unknown to petitioner, was also made a defendant in the bill of complaint (R. 5).[2]

On June 18, 1937, upon a charge by the Industrial Union of Marine and Shipbuilding Workers of America (R. 25), the National Labor Relations Board, through its Regional Director for the Fifth Region, respondent Bennett F. Schauffler, filed a complaint against the petitioner, Newport News Shipbuilding and Dry Dock Company, and gave notice of a hearing pursuant to Section 10 (b) of the Act (R. 21–25). The Board's complaint alleged that the company while engaged in the construction, overhaul, and repair of ships at its plant in Newport News, Virginia, had discharged and had refused to reinstate seven of its employees because of their union activity, had dominated and interfered with the formation and administration of a labor organization, known as "Representation of Em-

[2] The duties of these officials are set out in rules of the Board quoted in Footnote 2 (pages 5–7) of the brief for petitioners in Nos. 181 and 182.

ployees," had contributed financial and other support to said organization, and had thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act (R. 22–25).

The company filed no answer to the Board's complaint, but instead filed in the District Court of the United States for the Eastern District of Virginia its bill of complaint in the present case against the respondents Schauffler, Blum, and a trial examiner to be designated by the Board, each individually and in his official capacity with the Board, "and as the National Labor Relations Board" (R. 1, 64). The bill prayed for temporary and permanent injunctions against the holding of the scheduled Board hearing and the taking of further proceedings under the Act, and also for a declaratory judgment that the Act as applied to petitioner's business and to petitioner's relations with its employees was unconstitutional (R. 19–21).[3] The bill described the manner in which petitioner's business was conducted (R. 4–6, 63), and alleged that neither petitioner's business nor its re-

[3] Neither the assignment of errors (R. 97) nor the petition for certiorari sought a review of the denial by the District Court of petitioner's application for a declaratory judgment. Accordingly, that aspect of the case is not before this Court. *Gunning* v. *Cooley*, 281 U. S. 90, 98; *Johnson* v. *Manhattan R. Co.*, 289 U. S. 479, 494; *Zellerbach Paper Co.* v. *Helvering*, 293 U. S. 172, 182; *Prudence Co.* v. *Fidelity & Deposit Co.*, 297 U. S. 198, 208.

lations with its employees affected interstate or foreign commerce (R. 7, 17). The bill further alleged that petitioner had not engaged in any unfair labor practices (R. 7–8).

As grounds for invoking equity jurisdiction, the bill alleged that petitioner was without an adequate remedy at law (R. 15, 18) and would be irreparably damaged by the holding of the hearing by the Board and the taking of any action in connection therewith (R. 12). The bill alleged as elements of irreparable injury that petitioner would be held up to scorn as a violator of a law of the United States and so would incur for as long as the proceedings lasted the odium and ill will of the public and of its own employees (R. 9); that company officials and employees would be required to attend the hearing as witnesses and to produce evidence of a confidential nature, thus causing interruption and damage to petitioner's business, and putting petitioner to expense, including fees for counsel, none of which expense would be recoverable (R. 9–10); that the result of holding a hearing would be to delay the construction of certain naval vessels, and thus cause petitioner to be liable for demurrage charges (R. 14); that the threat of criminal penalty pursuant to Section 12 of the Act precluded petitioner from preventing the attendance of its officers and employees as witnesses at the hearing and would coerce petitioner into permitting the Board ille-

gally to invade petitioner's constitutional rights, including the right to have confidential information pertaining to the business preserved as confidential (R. 11); and that the pendency and holding of the Board proceedings, regardless of their outcome, would prevent the company from fully maintaining and enjoying the benefits of friendly and harmonious relations with its employees under the "Plan of Representation of Employees" existing in the plant, would impede petitioner in exercising its right to bargain freely and independently with its employees, impair the efficiency of its employees, and encourage demands by organized labor with the result that petitioner would suffer irreparable and heavy damage in the loss of prospective profits on its shipbuilding contracts (R. 12–15).

Petitioner moved for a temporary injunction (R. 64–65). Respondents submitted a verified statement in opposition to the motion for a temporary injunction (R. 74–86), and at the same time moved that the bill of complaint be dismissed.[4] It was averred in the motion to dismiss, *inter alia,* that petitioner had a plain, adequate, and complete remedy under the Act (R. 71) and had failed to resort to or exhaust its administrative remedies (R. 72);

[4] Respondents moved to quash the subpoena in so far as directed to them "as the National Labor Relations Board" (R. 67–69). The District Court did not find it necessary to pass upon this motion. A similar motion was granted by the District Court in Nos. 181 and 182.

that granting the relief prayed would be in usurpation of the authority exclusively vested in the Circuit Court of Appeals by the Act (R. 71); that petitioner was not threatened with irreparable or immediate injury cognizable in equity (R. 71, 73); and that the bill failed to show an "actual controversy" within the meaning of the Federal Declaratory Judgment Act (R. 71, 74).

The case was heard upon respondents' motion to dismiss. On July 14, 1937, the District Court entered a decree denying petitioner's motion for an injunction *pendente lite* and application for a declaratory judgment, and granting respondents' motion to dismiss (R. 96). Addressing himself solely to the question of jurisdiction in equity, District Judge Way, in an opinion from the bench, concluded (R. 93):

> I have very little hesitation in holding that the complainant has a plain, adequate and exclusive remedy under the terms of the Act itself, that no irreparable damage is threatened, and that this Court has no jurisdiction of the controversy presented by the bill.

On July 29, 1937, after allowance of an appeal (R. 98), petitioner filed in the Circuit Court of Appeals for the Fourth Circuit a motion for an injunction *pendente lite* restraining the respondents from holding the hearing or taking further proceedings pending the final determination of the cause (R. 101). The case was argued both on the motion and on the merits on August 2, 1937. On

the same day, the Circuit Court of Appeals filed a *per curiam* opinion concluding that the petitioner

> has an adequate remedy under the statute and may not apply for relief in equity until it has exhausted the administrative remedy there provided (R. 104),

and entered a decree denying the application for a restraining order pending appeal and affirming the decree of the District Court dismissing the complaint (R. 105–6).

The petition for certiorari was filed on August 11, 1937. On August 12, 1937, Mr. Justice Butler denied petitioner's motion for a temporary injunction against the holding of the hearing by the Board pending determination by this Court of petitioner's application for a writ of certiorari.

The hearing was held before a trial examiner of the Board from August 30 to September 8, 1937. The trial examiner has not as yet submitted his report to the Board, and the Board has not made any order in the case. The bill of complaint prays both that the holding of a hearing be enjoined and that the Board and its agents be restrained "from having any proceedings or taking any action whatever, at any time or times" for the purpose of determining whether or not the complainant has engaged or is engaging in any so-called unfair labor practices under the National Labor Relations Act (R. 20–21).

SUMMARY OF ARGUMENT

Since the issues in this case are the same as those presented in No. 181, we respectfully refer the Court to the Government's brief in that case for the statement of our argument. This brief is limited to a reply to several of the points raised by petitioner.

(1) The fact that the National Labor Relations Board may ultimately be found to have no jurisdiction over the petitioner does not mean that the Board may not hold a hearing to determine *inter alia* whether it has jurisdiction. Whatever be the extent of the power of the courts to determine *de novo* jurisdictional questions decided by administrative bodies, it has never been suggested that the administrative bodies could be enjoined from investigating such matters in the first instance. On the contrary, the doctrine that courts will not interfere with administrative action until administrative remedies have been exhausted requires that all such matters be first submitted to the proper administrative agency.

(2) The distinction suggested by the petitioner between the power of the Board to make an informal preliminary investigation and its power to hold a formal public hearing finds no support in the statute and is entirely without substance.

(3) The hearing sought to be enjoined has already been held. Accordingly, petitioner can now only complain of injuries which it alleges will be caused by the further proceedings in this case.

ARGUMENT

The issues in this case are the same as those presented in *A. Howard Myers* v. *Bethlehem Shipbuilding Corporation, Ltd.*, No. 181. The companies involved in both cases are shipbuilding corporations, and the allegations in the two bills of complaint with reference to irreparable injury are substantially identical. In each case complainants moved for a temporary injunction, and the representatives of the Board moved to dismiss the bill. In the instant case, No. 305, the District Court granted respondents' motion to dismiss the bill of complaint, and accordingly also denied petitioner's motion for a temporary injunction; in the *Myers* case the District Court denied the motion to dismiss and granted the temporary injunction. But inasmuch as the reasons advanced for reversing the decree in the *Myers* case necessarily lead to dismissal of the bill (petitioner's brief, No. 181, pp. 43–47), these differences in the manner in which the two cases were disposed of below are not material here.[5] Accordingly we respectfully refer

[5] Although the denial of petitioner's motion for a preliminary injunction was assigned as error in the Circuit Court of Appeals (R. 97), this point is not specifically raised either in "the Specification of Errors to be Urged" or the "Questions Presented" in petitioner's brief in this Court, or in the petition for certiorari and brief filed in support of the petition. The sole question properly before this Court is whether the District Court erred in dismissing the bill, and the argument in petitioner's brief is based on that theory. Nevertheless, petitioner now prays that this Court direct the district court to grant an injunction *pendente lite* (peti-

the Court to the brief for the petitioners in No. 181 (pp. 16–47) for the affirmative statement of the Government's position on the questions presented in this case.

This brief will be limited to a reply to several of the points raised in petitioner's brief.

(1) Petitioner's main argument is that if it is not subject to the regulatory powers of the Board,[6] it cannot be subject to the Board's investigatory powers, and that it is therefore entitled to a preliminary judicial determination of the question of the Board's jurisdiction. In support of this proposition petitioner relies on *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434; *Jones* v. *Securi-*

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tioner's brief, p. 42). The opinion of the district court indicates that the denial of the injunction was regarded as necessarily following from the dismissal of the bill. But if the district court can be said to have exercised its discretion on the motion for temporary injunction, that discretion was exercised against the granting of the injunction.

[6] Petitioner assumes that the allegations in its bill that its relations with its employees do not directly affect interstate commerce (R. 17) are admitted by the motion to dismiss. These statements are clearly conclusions of law, and accordingly are not admitted. *Pennie* v. *Reis*, 132 U. S. 464, 469–470; *Pierce Oil Corporation* v. *Hope*, 248 U. S. 498, 500; *Nortz* v. *United States*, 294 U. S. 317, 324–325. The only facts admitted by the motion are those describing the manner in which petitioner's business is carried on, not the legal conclusion drawn from those facts. For reasons stated in our brief in the *Myers* case (pp. 18–20), the question as to whether the Act may validly be applied to petitioner is not now before this Court. Petitioner's business is carried on in substantially the same manner as that of the Bethlehem Shipbuilding Corporation (R. 22–24, 1, 4, 6, 63).

ties and Exchange Commission, 298 U. S. 1; and *Crowell* v. *Benson,* 285 U. S. 22.[7]

The *Ellis* and *Jones* cases held only that a court may refuse to compel a witness to appear or give testimony at an administrative hearing not authorized by statute. Even if it be assumed, *arguendo,* that petitioner could raise the question of the Board's jurisdiction in a proceeding brought by the Board to enforce a subpoena under Section 11 (2) of the Act,[8] it does not follow that petitioner can enjoin the holding of the hearing under Section 10. *Federal Trade Commission* v. *Claire Furnace Company,* 274 U. S. 160, makes it clear that injunctive relief against an investigation is not to

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[7] Petitioner also refers to a statement in the opinion of this Court in *Washington, Virginia and Maryland Coach Company* v. *National Labor Relations Board,* 301 U. S. 142, 146, that "the Act limits the jurisdiction of the Board to instances which fall within the commerce power and if the Board should exceed the jurisdiction conferred upon it, any party aggrieved is at liberty to challenge its action." This language obviously was intended to refer to orders of the Board reviewable under Section 10 (f) of the Act, and not to imply that the Board could be enjoined from holding hearings under Sections 10 (b) and (c).

[8] In the *Ellis* case, *supra,* the Interstate Commerce Commission was permitted to inquire as to the existence of facts which would bring the Armour Car Lines within its jurisdiction under Section 15 of the Interstate Commerce Act. This would seem closely to parallel the inquiry of the National Labor Relations Board as to whether petitioner is subject to the National Labor Relations Act. Compare *Natural Gas Pipe Line Co.* v. *Slattery,* No. 230, October Term, 1937, decided December 6, 1937, involving an enforceable order for the furnishing of data.

be granted when the complainant will have an opportunity to be heard in opposition to any compulsory process that may be issued.[9]

In a number of cases in which this Court has refused to interfere with administrative action, it was contended, just as here, that the administrative body was acting outside its jurisdiction. Thus, in *Dalton Adding Machine Company* v. *State Corporation Commission*, 236 U. S. 699, *St. Louis-San Francisco Ry. Co.* v. *Alabama Public Service Commission*, 279 U. S. 560, and *Lawrence* v. *St. Louis-San Francisco Ry. Co.*, 274 U. S. 588, the claim was that a state body was burdening interstate commerce, and thus exceeding its jurisdiction; in the *Claire Furnace* case, it was alleged that the Federal Trade Commission was attempting to investigate purely local transactions. In those cases the Court plainly recognized that the question of jurisdiction must first be decided by the administrative agency, and that until jurisdiction was taken and an order entered by the administrative body, there was no cause for judicial intervention. The Court refused to assume in advance that the administrative agency would unlawfully seek to extend its jurisdiction in violation of the

[9] It is to be noted that in the *Claire Furnace* case disregard of the Commission's order exposed the complainants to the possibility of incurring criminal penalties and liability to civil forfeiture in advance of any judicial determination as to the validity of the order. In the present case, where no such possibility exists, an injunction should *a fortiori* be denied.

Constitution. Compare *Dalton Adding Machine Co.* v. *State Corporation Commission of Virginia, supra,* p. 701; *Lehmann* v. *State Board of Public Accountancy,* 263 U. S. 394, 398; *Continental Baking Company* v. *Woodring,* 286 U. S. 352, 369; *E. I. DuPont de Nemours & Co.* v. *Boland,* 85 F. (2d) 12, 15 (C. C. A. 2d).

Petitioner's argument in substance comes down to the proposition that whenever there is any doubt as to the jurisdiction of an administrative body over a particular person, the question may be determined in a court of equity in advance of any administrative proceeding.[10] Application of such a principle in other fields would completely revolutionize the system of administrative law in existence today. Many cases involving the jurisdiction of the Interstate Commerce Commission[11] would be submitted to courts of equity before the Commission had acted, as soon as a hearing was scheduled. On the same theory—that where courts were ultimately to decide questions they should do so prior to any administrative hearing—proceedings before the Federal Trade Commission could be enjoined until a court decided whether

[10] In every instance, a person could allege that attendance at the administrative hearing would upset the running of his business and cause him to incur irrecoverable expenses, thus resulting in the same kind of irreparable injury alleged here.

[11] E.g., *United States* v. *Idaho,* 298 U. S. 105; *Texas & Pacific Ry. Co.* v. *Gulf, Colorado and Santa Fe Ry. Co.,* 270 U. S. 266, 272; *Piedmont & Northern Ry. Co.* v. *United States,* 280 U. S. 469.

particular practices constituted unfair methods of competition in interstate commerce. Under this view, in the situation presented by *Crowell* v. *Benson, supra,* the jurisdictional question should have been determined by a court of equity in advance of the proceeding before a deputy commissioner.

Needless to say, no such doctrine is sanctioned by the decisions of this Court. Whatever be the extent of the power of the courts to determine *de novo* jurisdictional questions decided by administrative bodies (*Crowell* v. *Benson, supra; St. Joseph Stockyards* v. *United States,* 298 U. S. 38), it has never been suggested that the administrative bodies lack power to investigate such matters in the first instance. On the contrary, the doctrine that courts will not interfere with administrative action until administrative remedies have been exhausted requires that all such matters be first submitted to the proper administrative agency.

(2) Petitioner attempts to draw a distinction "between an informal preliminary inquiry which may be conducted without notice, and a formal public hearing after charges are preferred and notice is given" (petitioner's brief, p. 33). The suggestion apparently is that provisions in the Act for a preliminary inquiry furnish the Board with adequate means for determining whether an order should ultimately be issued against an employer, and that accordingly the public hearing may be enjoined unless it appears in advance that the

Board has correctly determined, in such an informal inquiry, that it has jurisdiction.[12]

The suggestion is a patent distortion of the scheme of the statute. Petitioner attempts to read into Section 5 of the Act a special provision for such "informal" investigations, distinct from the public hearings provided for in Section 10 (b).[13] The sentence quoted by petitioner from Section 5 declares that "The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States." This sentence plainly was intended to give the Board power to prosecute "any inquiry," formal or informal, (a) through designated agents and (b) in any part of the United States.

That the Board has power to make inquiries preliminary to the issuance of a complaint and notice of formal hearing there is no doubt. Evidently, however, neither Section 5 nor any other provision of the Act contemplates a preliminary inquiry prejudging the case in the fashion urged by the petitioner. If it did so, with the consequences sug-

[12] Thus, it is stated (p. 33) that the formal hearing required by the Act is "analogous to trial after indictment."

[13] Section 5 provides: "The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case."

gested by the petitioner, the Board would not only be subject to an injunction in any case in which its preliminary judgment was wrong, but it would be exposed to a suit for an injunction in any case in which its preliminary judgment was thought by the employer to be wrong. Such a scheme would be productive of intolerable delay, whereas the statute manifestly contemplates expedition. It would encourage the bias of deliberate *ex parte* judgment, whereas the statute requires the final determinations of the Board to be predicated upon an open hearing. It would deprive the Board, in the decision of some of the most difficult questions to come before it, of recourse to the sole available means of obtaining reliable and trustworthy information—the taking of sworn testimony from witnesses subject to cross-examination.

We submit that no tenable basis exists for an attempt to minimize (see brief for petitioner, pp. 32–33) "the practical necessity," which properly influenced the court below, "of allowing the Board to make inquiry and reach some conclusion with respect to its jurisdiction." On the contrary, the Act plainly vests this function exclusively with the Board in the first instance and inhibits time-consuming intervention by a court prior to formal determination by the Board that jurisdiction exists.

In most of the 95 equity suits brought against the Board and its officers [14] averments were made

[14] Compare the identical allegations in the case of the *Bethlehem Ship Building Corp.*, No. 181; and in *Heller*

by the employer that he was not engaged in interstate commerce, that he enjoyed harmonious relations with his employees, and that the holding of a hearing would disturb those relations and put him to inconvenience and expense. If such allegations are sufficient to permit the intervention of a court of equity, virtually all respondents in Board proceedings (except those already held subject to the Act by this Court) could delay the action of the Board until their status was first determined in equity cases instituted as soon as the Board ordered a hearing to be held. For the reasons elaborated in the brief for the Government in No. 181, to permit such a suit would not only be in violation of the intention of Congress in enacting the National Labor Relations Act but in contravention of the principle, established by numerous decisions of this Court, that administrative remedies must be first exhausted before resort to judicial proceedings.

(3) In view of the refusal of the Circuit Court of Appeals and of Mr. Justice Butler to grant injunctions staying the action of the Board pending appeal, the Board proceeded with the case in accordance with the statute. The hearing before the trial examiner was held from August 30 to September 8, 1937. The trial examiner has not as yet made his report to the Board, and the Board has made no decision.

Bros. Co. v. *Lind*, 86 F. (2d) 862, certiorari denied, 300 U. S. 672; and *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. (2d) 97, certiorari denied, 299 U. S. 559.

The holding of the hearing, accordingly, can no longer be enjoined, and petitioner cannot be protected from the injuries which it alleges will be caused by the hearing. To that extent the case is now moot. Petitioner can now only complain of injuries which it alleges will be caused by the further proceedings in the case—the report of the trial examiner, the possibility of an additional hearing, the argument before the Board, and the Board's findings and order. If the Board should make an order adverse to petitioner, the order would, of course, be enforceable only by the Circuit Court of Appeals.

CONCLUSION

It is respectfully submitted that the decree of the Circuit Court of Appeals for the Fourth Circuit should be affirmed.

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DECEMBER 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937

SUPREME COURT OF THE UNITED STATES.

No. 305.—October Term, 1937.

Newport News Shipbuilding and Dry Dock Company, Petitioner, *vs* Bennett F. Schauffler, Individually and as Regional Director for the 5th Region, National Labor Relations Board, et al.	On Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[January 31, 1938.]

Mr. Justice Brandeis delivered the opinion of the Court.

The Newport News Shipbuilding and Dry Dock Company is a Virginia corporation engaged in the construction, overhaul and repair of ships at its plant in that State. In June, 1937, the Industrial Union of Marine and Shipbuilding Workers of America filed with the National Labor Relations Board the charge that the Company was "dominating and interfering with the employees' right of self organization by dominating, interfering with and lending financial support to a so-called labor organization" at said plant known as "Representation of Employees"; that the Company had discharged and refused to reinstate several employees at the plant "because they joined and assisted a labor organization of their own choosing and engaged in concerted activities with fellow employees for collective bargaining and other mutual aid and protection"; and that by so doing the Company was engaged in unfair labor practices within the meaning of Section 8, subsections (1), (2) and (3) of the National Labor Relations Act. Thereupon, the Board, through its Regional Director for the 5th Region, Bennett F. Schauffler, filed a complaint against the Company and gave notice of a hearing pursuant to Section 10 (b) of the Act.

The Company did not answer the complaint. Before the date assigned for the hearing, it brought, in the federal court for eastern Virginia, this suit, in which it sought to enjoin Schauffler, Jacob Blum, the Regional Attorney for the 5th Region, both citizens of

Maryland, and the Trial Examiner designated or to be designated, from holding the hearing and taking further proceedings under the Act. There were prayers for both an interlocutory and a final injunction and for a declaratory judgment that the Act as applied to the Company's business and its relations to its employees is unconstitutional. As the basis for this relief it alleged facts similar to those set forth in the bill of the Bethlehem Shipbuilding Corporation, Ltd., in No. 181, decided this day. It alleged, specifically, that neither the Company's business nor its relations with its employees affected interstate or foreign commerce; that it had not engaged in any unfair labor practice; and that it would be irreparably damaged by the holding of the hearing of the Board and the taking of any action in connection therewith. Among the elements of irreparable injury alleged were that the Company would be held up to scorn as a violator of a law of the United States and so would incur for as long as the proceedings lasted the odium and ill will of the public and of its own employees; that its officials would be compelled to produce evidence of a confidential nature; and that the pendency and holding of the Board's proceedings, regardless of their outcome, would impede the Company in exercising its right to bargain freely with its employees.

The case was heard by the District Court upon the plaintiff's application for a temporary injunction and the defendants' motion that the bill be dismissed on the ground, among others, that the Company had failed to exhaust its administrative remedies and that granting the relief prayed would be an usurpation of the authority exclusively vested by the Act in the Court of Appeals. The court denied the temporary injunction and dismissed the bill on the ground that the Company had "a plain, adequate and exclusive remedy under the terms of the Act itself, that no irreparable damage is threatened, and that this [the District] Court has no jurisdiction of the controversy presented by the bill." That decree was affirmed by the Court of Appeals for the Fourth Circuit, which held that the Company "has an adequate remedy under the statute and may not apply for relief in equity until it has exhausted the administrative remedy there provided." 91 F. (2d) 730.

We granted certiorari because of conflict with *Bethlehem Shipbuilding Corporation, Ltd.* v. *Myers, et al.*, 89 F. (2d) 1000, in which

the facts are substantially similiar and the issues the same. That case is reversed by our opinion delivered this day in No. 181. For the reasons there stated, we affirm the decree herein, adding only the following.

First. The Company insists that since the case was heard on motion to dismiss the bill which alleges that the Company is not engaged in interstate or foregin commerce and its relations to its employees do not affect such commerce, these allegations must be accepted as true. The motion admits as facts allegations describing the manner in which the business is carried on, but not legal conclusions from those facts. The allegations that interstate or foreign commerce is not involved are conclusions of law.[1]

Second. The Company urges that, since the Board can have jurisdiction only over businesses engaged in interstate or foreign commerce, since the Company denies that it is so engaged, and the Federal Constitution does not permit vesting in an administrative body exclusive power to determine its own jurisdiction, the District Court must have power to pass upon that issue. The Act does not purport to leave the determination wholly to the Board. It confers upon the Board exclusive initial power to make the investigation, but provides for judicial review by the Circuit Court of Appeals.[2] As the only question here involved is the power of the Board to make the investigation, we have no occasion to consider the extent of the review provided.

It is suggested that while the Board has the right and duty to make, under Section 5 of the Act, a preliminary informal inquiry before public action, for the purpose of informing itself whether a particular concern is subject to its authority, the District Court may entertain a suit to prevent the Board from conducting a public investigation under Section 10 if the concern claims that it is not engaged in interstate or foreign commerce. The limitation suggested would, in large measure, defeat the purpose of the legislation. There is no basis in the Act for such a contention.

Third. The Circuit Court of Appeals having refused to grant an injunction staying the action by the Board pending the contem-

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[1] Compare Pennie *v.* Reis, 132 U. S. 464, 469-670; Pierce Oil Corporation *v.* Hope, 248 U. S. 498, 500; Nortz *v.* United States, 294 U. S. 317, 324-325; Pacific States Box & Basket Co. *v.* White, 296 U. S. 176, 184-85.

[2] Section 10 (a), (e), (f). See National Labor Relations Board *v.* Jones & Laughlin Steel Co., 301 U. S. 1, 47; Myers *v.* Bethlehem Shipbuilding Corp., Ltd., *supra*, p. —.

plated appeal, application for a stay was made to Mr. Justice Butler of this Court, after filing of the petition for a writ of certiorari. It has been called to our attention that, upon his denial of that application, the hearing was held before the trial examiner of the Board from August 30 to September 8, 1937, and has apparently been closed. To the extent that relief was sought to prevent the injury resulting from a hearing, the cause appears to be moot. But the cause cannot be disposed of as moot, as the trial examiner has not yet made his report to the Board; the Board has made no decision; and thus there is a possibility of further proceedings.

Decree Affirmed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.